



Signed and Filed: September 03, 2009

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 08-30154 TEC
)	
RICHARD L. HATFIELD,)	Chapter 7
)	
)	
)	
Debtor.)	
)	
JANINA M. ELDER, Trustee in)	Adv. Proc. No. 08-3072 TC
Bankruptcy of the Estate of)	
RICHARD L. HATFIELD,)	
)	
Plaintiff,)	
)	
vs.)	
)	
SAND HILL ROAD VENTURE GROUP,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM DECISION RE DEFENDANT JENNIFER MOORE'S
MOTION FOR SUMMARY JUDGMENT

On May 1, 2009, the court held a hearing on Defendant Jennifer Moore's motion for summary judgment. The court took the matter under submission and now determines that Moore's motion should be granted with respect to the effect of the *lis pendens* recorded on June 2, 2002 in connection with In re the Marriage of Moore and Hatfield, San Mateo Superior Court No. F068286.

1 **FACTS**

2 On July 4, 1990, Richard Hatfield and Jennifer Moore held a
3 ceremony in which they purported to be married, although they had
4 neglected to obtain a marriage license. In June 1993, Hatfield
5 purchased the real property known as 35 Echo Lane, Woodside,
6 California (the Property). Hatfield took title to the Property in
7 his name only, as an unmarried man.

8 On December 17, 2001, Moore filed in the San Mateo Superior
9 Court a petition for dissolution of marriage (F068286) in which she
10 asserted a community property interest in the Property. On June 2,
11 2003, Moore recorded a *lis pendens* identifying the dissolution
12 action and the Property. On January 3, 2003, the San Mateo
13 Superior Court filed a statement of decision in which it found that
14 Hatfield and Moore had never legally married. On the same date,
15 the court issued an order expunging the *lis pendens*. The
16 expungement order was never recorded, and the dissolution-of-
17 marriage petition was never dismissed.

18 On August 21, 2003, Moore filed in the San Mateo Superior
19 Court a civil action (Civ 433625) in which she asserted a
20 contractual Marvin claim to an interest in the Property. On
21 February 26, 2004, Moore filed a motion to consolidate that civil
22 action with the previously filed dissolution-of-marriage
23 proceeding. The motion to consolidate was granted on April 20,
24 2004.

25 On February 27, 2004, two deeds of trust, executed by Hatfield
26 only, were recorded against the Property (the Deeds of Trust). The
27 first-filed was in favor of Preferred Financial Group to secure a
28 loan in the approximate amount of \$1.21 million. The second-filed

1 was in favor of Sand Hill Venture Group to secure a loan in the
2 approximate amount of \$1.51 million.

3 On January 22, 2007, the San Mateo Superior Court issued a
4 statement of decision on Moore's Marvin claim, determining that
5 Moore had a one-half interest in the Property. The decision was
6 issued in the consolidated action. That is, both the written
7 statement of decision and the docket upon which it was entered
8 included the numbers of both the original dissolution-of-marriage
9 action in which the *lis pendens* was recorded (F068286) and the
10 later-filed Marvin action (Civ 433625).

11 Hatfield filed a chapter 7 petition on January 31, 2008.

12 The Chapter 7 trustee has listed the Property for sale.
13 Trustee contends that the Deeds of Trust should be paid from the
14 proceeds of both Moore's and Hatfield's interests in the Property,
15 because those encumbrances were created before Moore was awarded an
16 interest in the Property and because Moore's *lis pendens* was
17 expunged. Moore contends that the Deeds of Trust attach only to
18 Hatfield's one-half interest in the Property, because the award
19 that Moore received in the consolidated action relates back to a
20 date before the Deeds of Trust were recorded.

21 **DISCUSSION**

22 A party who files a lawsuit asserting a claim for ownership of
23 real property can ensure that her claim enjoys priority over anyone
24 who might receive a conveyance of the property from the opposing
25 party before the lawsuit is concluded. The claimant does this by
26 recording a notice of pendency of action, or *lis pendens*. Once the
27 *lis pendens* is recorded, any party who might purchase or lend
28 against the property has constructive notice of the adverse claim

1 and receives any conveyance subject to whatever interest is
2 ultimately awarded to the claimant in the pending action. Cal.
3 Code Civ. Proc. § 405.24. The *lis pendens* remains effective until
4 the pending action is concluded by a final judgment not subject to
5 appeal, until a withdrawal of the *lis pendens* is recorded, or until
6 an order expunging the *lis pendens* is recorded. 5 Miller & Starr
7 §§ 11:137 at 355; 11:142 at 372.

8 Had Moore been awarded an interest in the Property on her
9 original claim for division of marital property, the application of
10 the statutory rules noted above would be simple. Because her *lis*
11 *pendens* was recorded before the Deeds of Trust were recorded, and
12 because Moore prevailed in the pending action on her claim for
13 ownership of a one-half interest in the Property, Moore's interest
14 would have priority over the Deeds of Trust. The Deeds of Trust
15 would attach only to Hatfield's one-half interest in the Property.

16 The effect of Moore's *lis pendens* is more difficult because
17 the present case involves three variations from the normal fact
18 pattern. Moore prevailed only on an amended complaint; that
19 amended complaint was first filed in a lawsuit separate from the
20 lawsuit of which the *lis pendens* provided constructive notice; and
21 the Superior Court had entered an order expunging Moore's *lis*
22 *pendens* before the Deeds of Trust were recorded.

23 For the reasons stated below, I determine that notwithstanding
24 the somewhat unusual facts of this case, Moore's *lis pendens* was
25 effective to give her one-half interest in the Property priority
26 over the Deeds of Trust.

27 That Moore did not prevail upon her original complaint does
28 not render her *lis pendens* ineffective. As noted above, a *lis*

1 *pendens* does not become ineffective through the failure of the
2 lawsuit until the lawsuit has been resolved by a final judgment
3 that is no longer subject to appeal. If relief is denied upon the
4 original complaint, relief that is granted on an amended complaint
5 will have priority over any conveyance that is recorded after the
6 date the amended complaint is filed, or that is recorded after the
7 date to which the amended complaint relates back. Gen. Petroleum
8 Corp. of Calif. v. Dougherty, 117 F.2d 529, 538-39 (9th Cir. 1941);
9 Dobbins v. Economic Gas Co., 182 Cal. 616, 626-28 (1920); accord
10 Fox v. Clarys, 227 Mont. 194, 196-97 (1987). Moore's amended
11 complaint predates the Deeds of Trust under either approach.

12 I determine that Moore's amended complaint was made part of
13 the pending action before the Deeds of Trust were recorded. The
14 Marvin claim was filed in June 2003, more than six months before
15 the Deeds of Trust were recorded. Although the Marvin claim was
16 originally filed as a new action separate from the pending action,
17 Moore had filed a motion in the pending action to consolidate the
18 two actions before the Deeds of Trust were recorded. The motion to
19 consolidate was granted, and Moore was awarded a one-half interest
20 in the Property in the consolidated action. Thus, before they
21 recorded the Deeds of Trust, the holders of the Deeds of Trust had
22 notice that Moore was seeking to assert the Marvin claim in the
23 pending action.

24 Even if the Marvin claim is not considered to have been filed
25 in the pending action until the motion to consolidate was granted,
26 the amended complaint relates back to the date the *lis pendens* was
27 recorded, because the Marvin claim did not assert a new cause of
28 action.

1 Under California law, an amended complaint relates back to the
2 date of the recording of the *lis pendens* unless it raises a new
3 cause of action. Gen. Petroleum, 117 F.2d at 538; Dobbins, 182
4 Cal. at 627. The scope of a cause of action is a fact-based
5 concept; whether an amended complaint creates a new cause of action
6 depends upon whether it relies upon a different set of facts.
7 Black's Law Dictionary defines "cause of action" and "new cause of
8 action" in fact-related terms.

9 **cause of action.** 1. A group of operative facts giving
10 rise to one or more bases for suing; a factual situation
11 that entitles one person to obtain a remedy in court from
12 another person

13 **new cause of action.** A claim not arising out of or
14 relating to the conduct, occurrence, or transaction
15 contained in the original pleading. • An amended pleading
16 often relates back to the date the original pleading was
17 filed. Thus, a plaintiff may add claims to a suit
18 without facing a statute-of-limitations bar, as long as
19 the original pleading was filed in time to satisfy the
20 statute. But if the amended pleading adds a claim that
21 arises out of a different transaction or occurrence, or
22 out of different alleged conduct, the amendment does not
23 relate back to the date the original pleading was filed.

24 Moore's original claim for division of marital property and
25 the Marvin claim asserted in her second complaint are based upon
26 the same core of operative facts: the couple's promise to treat
27 each other as if they were married.

28 [T]here are too many indices of a contractual
understanding to ignore. Moore and Hatfield clearly held
themselves out to the world as married; a co-worker
testified that everyone at the company thought they were
married. Moore's relatives (who were credible) testified
they acted as a married couple. They conducted an
apparently active social life as a married couple. They
actively parented and interacted with other parents as a
married couple. They signed important documents as
husband and wife on numerous occasions.

January 22, 2007 Statement of Decision of the San Mateo Superior
Court at 4:15-21.

1 That the Family Court entered an order expunging Moore's *lis*
2 *pendens* also does not affect the constructive notice created by
3 Moore's *lis pendens*, because that order was never recorded.
4 Section 405.24 of the California Code of Civil Procedure provides
5 that a *lis pendens* provides constructive notice of the claims in
6 the pending action from the date of its **recording**.

7 From the time of recording the notice of pendency of
8 action, a purchaser, encumbrancer, or other transferee of
9 the real property described in the notice shall be deemed
10 to have constructive notice of the pendency of the
11 noticed action as it relates to the real property and
12 only of its pendency against parties not fictitiously
13 named. The rights and interest of the claimant in the
14 property, as ultimately determined in the pending noticed
15 action, shall relate back to the date of the recording of
16 the notice.

12 Similarly, section 405.60 provides that purchasers and
13 encumbrancers are deemed not to have constructive notice of the
14 pending action after the date of the **recording** of an order
15 expunging a *lis pendens*.

16 Upon the withdrawal of a notice of pendency of action
17 pursuant to Section 405.50 or upon recordation of a
18 certified copy of an order expunging a notice of pendency
19 of action pursuant to this title, neither the notice nor
20 any information derived from it, prior to the recording
21 of a certified copy of the judgment or decree issued in
22 the action, shall constitute actual or constructive
23 notice of any of the matters contained, claimed, alleged,
24 or contended therein, or of any of the matters related to
25 the action, or create a duty of inquiry in any person
26 thereafter dealing with the affected property.

22 The constructive notice provided by the recording of Moore's *lis*
23 *pendens* was never reversed by the recording of an order expunging
24 that *lis pendens*. 5 Miller & Starr § 11:142 at 372-74; Formula
25 Inc. v. Sup. Ct., 168 Cal. App. 4th 1455, 1465 (2008) (order of
26 expungement of *lis pendens* is given effect by being recorded in
27 chain of title to overcome effect of earlier *lis pendens*).
28

1 **CONCLUSION**

2 The Deeds of Trust attach only to the Hatfield bankruptcy
3 estate's one-half interest in the Property.

4 ****END OF MEMORANDUM****

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